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A PAMPHLET ON . . .

THE MASSACHUSETTS CONSENT DECREES FOR MENTALLY RETARDED CITIZENS

PRODUCED BY:
DEPARTMENT OF MENTAL HEALTH
DIVISION OF MENTAL RETARDATION
OFFICE OF TRAINING & RESOURCE DEVELOPMENT
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INTRODUCTION

This brochure was prepared by the Department of Mental Health, Division of Mental Retardation to serve several purposes. It is of primary importance that citizens of the Commonwealth are informed about the consent decrees.

For mentally retarded citizens, their families, guardians, representatives, advocates, it is vital that they not only know what the consent decrees specify but that they act to obtain the services to which they are entitled.

The Department, in its efforts to provide the necessary and appropriate services and programs to mentally retarded citizens, will be assisted if people are adequately informed.

This pamphlet does not purport to raise all the questions or to provide detailed answers. It is a beginning. There is an expectation that citizens will contact their local area and regional Department of Mental Health offices to make further inquiries, and obtain the necessary information.

It is important to note that the information contained in this pamphlet is restricted to the five state mental retardation facilities that are under consent decrees. The information does not apply to various pending suits or consent decrees involving other state institutions wherein services and programs are provided to mentally retarded citizens.

WHAT IS A CLASS ACTION LAWSUIT?

It is a legal procedure that permits one or more persons to seek relief through the courts on behalf of themselves and all others similarly situated in a perceived unfairness. If this small group of individuals succeeds in persuading the court, a much larger number of individuals benefits from the action.

WHAT IS A CONSENT DECREE?

It is a court ratified and enforced agreement that resolves the contested issues between opposing parties, the plaintiffs and the defendants, to the lawsuit. A consent decree is reached after a lawsuit is initiated. At the time the consent decree is adopted by a court, the decree becomes the judgment of the court. Because a consent decree is court ratified, it carries the same weight as any other court order, and may be enforced in the same manner.

There may be two types of consent decrees:

final decree: fully and finally disposes of the whole litigation; determines all questions raised by the case; leaves nothing that requires further judicial action.

interim decree: a provisional or preliminary decree which is not final and does not determine the suit, but directs some further proceedings in preparation for the final decree.

Final consent decrees may be modified after their adoption upon request by the parties and approval by the Court. This allows for the accommodations of changing circumstances. The Court will typically retain jurisdiction as with interim consent decrees, particularly to ensure compliance with the court's order.

Interim consent decrees require that jurisdiction be retained by the court. This is for the purpose of enabling any party to apply at any time for further relief which may be necessary or appropriate for the interpretation, enforcement, or modification of the decree terms or any of its provisions. Also, it provides for the supervision and approval of the resolution of issues left open for further planning and negotiation.

WHAT LEGAL ACTION HAS BEEN BROUGHT ON BEHALF OF MENTALLY RETARDED CITIZENS, AS A CLASS, IN THE COMMONWEALTH OF MASSACHUSETTS?

During the last decade, five state facilities for mentally retarded persons have been involved in class action lawsuits filed in the United States District Court for the District of Massachusetts. The state facilities are Belchertown, Wrentham, Dever and Fernald State Schools and the Monson Developmental Center. The lawsuits were filed against the Commonwealth in order to secure for all class members the right to care and treatment which meets minimal constitutional requirements.

The plaintiffs, the parties bringing action, include: mentally retarded citizens, their parents and guardians, and the Massachusetts Association for Retarded Citizens (MARC). The defendants, the parties against whom relief is being sought in the action, include: the Governor, the Secretary of Administration and Finance, the Secretary of the Executive Office of Human Services, the Department of Mental Health to include the Commissioner, the Assistant Commissioner for Mental Retardation, the Regional Services Administrators, and the state mental retardation facility superintendents.

WHO ARE THE CLASS MEMBERS OF THE MASSACHUSETTS CONSENT DECREES?

A class member is a member of a plaintiff class from either Fernald, Wrentham, Dever, Belchertown State Schools or the Monson Developmental Center. The plaintiff class includes persons who:

a) resided at the state school or the developmental center on or after the date the lawsuit was filed;

b) were on the residential rolls of a state school or the developmental center on or after the date the lawsuit was filed; (a person on the residential rolls may or may not reside at the facility but has not been discharged from the facility through established procedures of the Department of Mental Health);

c) were, regardless of the dates the lawsuits were filed, former residents of Wrentham or Dever State Schools who are readmitted and remain for thirty (30) consecutive days or more at one of these schools for emergency, respite care or specialized intensive services;

d) were admitted to Fernald, Dever, Wrentham or Belchertown State Schools or the Monson Developmental Center on or after the dates the lawsuits were filed *and* reside for thirty (30) consecutive days or more.

The date the lawsuit was filed for each state school under a consent decree is: Belchertown 2/2/72; Fernald 7/23/74; Wrentham 12/4/75; Dever 12/17/75; Monson 9/17/75.

Class members total 6000-7000 persons; 4500 of whom currently reside in the state schools. A person's status as a class member is permanent, therefore, a change in residential settings does not affect the class member's status.

WHAT IS THE COURT'S ROLE IN THE CONSENT DECREES?

Judge Joseph L. Tauro of the U.S. District Court for the District of Massachusetts supervised the negotiations which resulted in the agreements between the Commonwealth and the plaintiffs. The agreements were embodied in consent decrees. The Court formally adopted the decrees and they became the judgment of the Court.

The Court adopted the consent decrees in order to establish a framework for providing a suitable living environment and habilitation services for each class member, in accordance with federal and state constitutional standards. Until further order, jurisdiction over the consent decrees is retained by the Court for the purpose of enabling any party to apply at any time for further relief as may be necessary or appropriate for interpretation, implementation, enforcement or modification of the consent decree terms; and, supervision and approval of the resolution of issues left open for further planning and negotiation, in particular, the development of residential facilities and a system of community services.

The consent decrees are binding on the Commonwealth, unless modified by a court of competent jurisdiction. By virtue of the Supremacy Clause of Article IV of the United States Constitution, these consent decrees supersede conflicting state law. Any purported conflict between the Court's consent decrees and other federal laws or regulations can only be resolved authoritatively by the Court.

The United States District Court is solely empowered to waive or modify the consent decrees. The Court supervises the defendants' obligations toward the class members. Consistent with the consent decrees, the Court has empowered a court monitor to act as the arm of the Court during the implementation of the decrees.

WHAT IS THE ROLE OF THE COURT MONITOR?

The Court Monitor serves for a term of two years, at which time the Court and parties will consider the need for reappointment.

The Office of the Court Monitor is located at the Erich Lindemann Mental Health Center, Government Center Plaza, Boston, Massachusetts 02114. The Office's telephone number is (617) 727-0517.

The Office of the Court Monitor, its powers and duties, was established and defined by the Fernald, Wrentham and Dever consent decrees. By agreement of the parties, the Monitor's jurisdiction includes the Monson and Belchertown consent decrees, as well. The Monitor's jurisdiction extends to all aspects of the five consent decrees and every program which serves a class member.

The Court Monitor is responsible solely to the Court and must review and report to the Court on the progress toward implementation with the goal of facilitating compliance by the defendants. The Monitor submits reports to the Court and parties every three months describing the progress achieved in complying with the provisions of the consent decrees.

The Monitor works with the parties on a full-time basis; he may make suggestions to the defendants concerning methods of facilitating compliance and has the authority to make formal recommendations when defendants are not in compliance. Such recommendations are binding on the parties unless appealed to the Court.

The Monitor offers the services of his office to the parties as a coor-

dinator, mediator, or facilitator but does not impose a resolution if one can be otherwise attained.

The Monitor has the responsibility to respond to complaints and requests for specific actions by any party or other person affected by the consent decrees. If an individual complaint or problem is not, or cannot be resolved through existing procedures of the Department, then any employee or agent of the defendants, any resident, class member, guardian, advocate or other representative of a class member may bring any situation or disagreement related to the provisions of the decrees to the attention of the Monitor for appropriate action. The Monitor's action on individual complaints or problems is considered final and inappropriate for review by the Court.

The Monitor is granted access to all necessary information, people, records, residential environments and program areas, and is permitted to interview any person affected or involved in the implementation of the consent decrees.

The Monitor ensures that work on the consent decree tasks moves forward with appropriate speed. The plaintiffs and defendants must cooperate with the Monitor in his efforts to facilitate compliance.

WHAT ARE THE DEFENDANTS' BASIC RESPONSIBILITIES AS OUTLINED IN THE CONSENT DECREES?

The defendants in the consent decrees are: the Governor, the Secretary of Administration and Finance, the Secretary of the Executive Office of Human Services, and the Department of Mental Health to include its Commissioner, the Assistant Commissioner for Mental Retardation, the Regional Services Administrators and the state mental retardation facility superintendents.

The consent decrees differ by state schools but they commonly require the following to be accomplished by the defendants:

- undertake appropriate and necessary actions to implement the decrees and make the best effort to insure the full and timely financing of the decrees;
- make the best effort to secure the funding approval to pay for capital programs;
- comply with the specifications of the consent decrees and subsequent court orders;
- ensure that class members are accorded their legal rights;
- provide services to each class member on a lifetime basis for so long as services are needed;
- provide sufficient personnel in the state schools and the developmental center;
- develop, review and implement an individual service plan for each class member;
- provide an habilitation program and residence in the least restrictive and most normal setting appropriate to meet each class member's needs;
- develop and operate community facilities as necessary to meet class member's needs;
- monitor, evaluate and manage the system of community services;
- provide an appeal and grievance hearing process.

The Department of Mental Health, through its central, regional and area offices and superintendents, is responsible for the following activities as indicated in the consent decrees:

- ensure that each class member will reside in a safe, humane, clean, healthy, and appropriate living environment which is as normal as possible;

- provide staff resources in the state schools and in the community, as needed to meet requirements of the decrees;
- supply needed clothing, food, medical care and habilitative programs in the state schools and the developmental center;
- improve residential living environments in the state schools and the community;
- develop and implement an individual service plan for each class member;
- strengthen, expand, and maintain the capacity and capability of regional and area Department of Mental Health offices to effectively manage and soundly administer the community service delivery system;
- ensure that the Department's area offices are directly responsible for the provision and coordination of direct services to the mentally retarded in the community;
- place class members into alternative residential settings in accordance with class member's area of meaningful tie, with regard to personal wishes, and consistent with the individual service plan regulations;
- ensure quality, adequate, and appropriate community services through such activities as licensing, evaluation, and independent professional review;
- develop client cost models with client specific information for continuous new program planning, development, budgeting and implementation on the basis of client needs in community settings;
- ensure that future program planning and the development of a service delivery continuum are predicated upon the principle of normalization;
- investigate any complaints brought to the attention of the court monitor.

The *service providers* when contracting with the Department of Mental Health are responsible for the following activities:

- ensure through its contract with the Department that when serving class members, compliance is maintained with the provisions of the consent decrees;
- provide services in accordance with its contract with the Department, each class member's individual service plan, and the requirements of the Department's regulations;
- provide services in the most culturally normative and least restrictive environments;
- provide through the individual service plan process, an annual assessment of the class member in as many of the areas of need (daily living skills, dental, medical, psychological, social, entitlements, legal, education, training, vocational) as the provider considers necessary and sufficient after consultation with the class member and guardian and subject to the review of the service coordinator;
- provide services in accordance with the class member's individual service plan and provide at least: a social diagnosis, evaluation and assessment, periodic review, arrangement for appropriate services, training and counseling in daily living activities-community living skills-leisure time activities, and training in functional and developmental activities;
- develop and implement quarterly service agreements for each member as part of the individual service plan containing specific quarterly objectives and specific services to be provided, including intervention strategies to be used for the achievement of specific quarterly objectives;
- provide in writing its policies, procedures and standards for each class member with regard to: receiving visitors; receiving and making phone calls; private storage and living areas; asso-

ciating with other persons; marrying or entering into contracts; entering and leaving the premises at any or all times; additional rights outlined in Department law and regulation;

- provide written policies, procedures, and standards for receiving and handling class member's personal funds;
- ensure that any personal funds received on behalf of or by a class member are deposited in the person's personal bank account;
- maintain records for each class member in the program;
- accept for services only the class member who is within its professional and physical capacity to serve;
- comply with all applicable local, state and federal regulations and statutes.

WHAT GENERALLY ARE CLASS MEMBERS ENTITLED TO RECEIVE THROUGH THE CONSENT DECREES?

Each class member is entitled to:

- a written individual service plan which specifies in detail the individual's capabilities and needs for services with methods to be used to provide such services;
- services that are recommended in the individual service plan on a lifetime basis for so long as such services are needed and authorized by the class member or guardian;
- receive active treatment in accordance with the individual service plan;
- an habilitation program that provides care, treatment, training and education that will enable the class member regardless of the degree of handicapping conditions to develop and lead a life as close to normal as possible;

- placement in a residential environment as close as practicable to the geographic area in which the class member has the closest contacts, such as, family, program, friendship ties, and with regard to personal wishes;
- a residential living environment which is in the least restrictive and most normal setting appropriate to meet the individual's needs. The living arrangements must enable a class member to live as normal a life as possible, in settings integrated with the non-retarded community to the fullest extent possible. Living environments must be safe, humane, clean, healthy and appropriate. The living environments and other environmental conditions are designed for providing maximum habilitation, privacy, accessibility for the multiply handicapped, and training.
- a full and fair opportunity to resolve all questions relating to the adequacy of a new placement in respect to the individual's needs;
- at a minimum the following services: adequate medical, dental, audiological, neurological, and pharmacological services and other health related services; annual comprehensive medical and dental examinations; appropriate recreational and educational services; crisis intervention services in emergency situations; sufficient transportation to attend recommended program activities and professional services and participate in recreational activities, shopping and other community activities; appropriate, well-balanced and sufficient meals; adequate and appropriate clothing, linen and laundry;
- rights regarding such matters as personal dignity, freedom from physical or psychological abuse and mistreatment, restraints, and inappropriate medication and research;

- the availability at all times of respite care services, temporary residential assistance and emergency services;
- initiate at any time a request for transfer to a more appropriate setting;
- remain a class member on a permanent basis regardless of any change in residential settings;
- the right to challenge an immediate placement after an emergency placement has been affected;
- a prompt investigation and subsequent report made under the direction of the superintendent or area director, if a class member is involved in an alleged incident of abuse, neglect or mistreatment;
- have his/her guardian notified, parent or representative notified unless class member knowingly objects, if the class member is seriously injured or is seriously ill and a physician's attention is required;
- bring a situation or disagreement related to the provisions of the consent decrees to the attention of the Court Monitor for appropriate action (the guardian, advocate or representative may do so as well);
- object to the Court Monitor's response and may request a hearing before the Court;
- appeal any decision, action or inactivity on the part of the Department regarding the provision of treatment, care and services;
- raise objections before the Court regarding Department of Mental Health regulations on the rights of the mentally retarded person.

A class member, residing in a state school or developmental center that is under a consent decree, will not be placed in a community setting or transferred to another state mental retardation facility unless and until the regional services administrator or designee finds that such a placement or transfer will offer the individual appropriate services, an opportunity for personal development, and a more suitable, less restrictive living environment. The regional services administrator or designee must give notice to the class member prior to such a placement or transfer. The class member may review the relevant records and have an opportunity to visit the proposed new residence.

A class member, residing in a state school or institution does not perform institutional labor involving the operation and maintenance of the facility except to the extent such labor is part of the individual service plan and unless the class member is appropriately compensated for labor which is of an economic benefit to the institution.

WHAT ADDITIONAL INFORMATION IS AVAILABLE TO EXPLAIN THESE ISSUES?

The consent decrees contain detailed information concerning the responsibilities of the Commonwealth to the class members. The Wrentham, Dever and Fernald consent decrees are the most comprehensive in content. It has been agreed upon by the plaintiffs, Court and the defendants that the entitlements specified in these three decrees are to be accorded to class members in the Belchertown and Monson cases, as well.

The Wrentham and Dever Consent Decrees require the Department of Mental Health to develop a community plan. The plan calls for the development and operation of community facilities and programs to meet the needs of class members. *The Community Services Develop-*

ment Plan was prepared by the Department of Mental Health, Division of Mental Retardation in October, 1979. It was approved by the Administration and submitted to the plaintiffs for review and its future inclusion in the Wrentham and Dever final decrees.

The Community Plan (1) sets forth a design and implementation plan for a system of community services, adequate to meet the changing needs of all class members who will move from the institution to the community; (2) addresses not only future placements but also the extent to which existing services need to be upgraded for class members placed in the community since the beginning of the lawsuit; (3) specifies the cost of all components including guidelines, and cost standards for residential, day and support services based on existing prototypes; (4) guarantees that each class member will be provided services in the least restrictive environment, appropriate to meet the individual's needs; (5) details a plan for the reallocation of institution resources for community utilization; (6) ensures that services be provided to each class member on a lifetime basis for so long as needed; (7) addresses the Department's ability to monitor, evaluate, and manage the system of community services.

Many of the issues incorporated into the body of each consent decree require a more detailed explanation to ensure thorough and accurate implementation for all class members. These issues include placement into alternative residential settings, individual service plan development and procedures for the appeal of proposed decisions. The explanatory documents will range in form from policies and procedures to state regulations. These documents are being developed and will be distributed and implemented during this year.

Copies of the consent decrees, the approved Community Plan and other explanatory documents will be made available through your local Department of Mental Health Area Office.

WHERE MAY I OBTAIN ADDITIONAL INFORMATION?

Questions should be directed to your local area office of the Department of Mental Health. If you are unsure of which area office to contact, the regional office will be able to assist you. The following list indicates the Department's regional and area offices and their phone numbers:

Region I (Western Massachusetts)
Regional Office: (413) 584-1644

Area Offices:	Berkshires	(413) 447-7381
	Franklin-Hampshire	584-1644 ext. 303
	Holyoke-Chicopee	594-9141
	Springfield	781-0526
	Westfield	568-9221

Region II (Central Massachusetts)
Regional Office: (617) 727-8542

Area Offices:	Fitchburg	(617) 343-6901
	Gardner-Athol	632-6214
	Blackstone Valley	478-0820
	South Central	765-9771 ext. 353
	Worcester	752-4681

Region III (North Shore)
Regional Office: (617) 727-9550

Area Offices:	Danvers-Salem	(617) 727-0347
	Haverhill-Newburyport	774-8035
	Lawrence	727-9472
	Lynn	727-7054
	Tri-City	727-6717
	Eastern Middlesex	727-8737
	Cape Ann	727-1581
	Lowell	727-5658

Region IV-A (North & Central Middlesex)
Regional Office: (617) 727-1453

Area Offices:
- Cambridge-Somerville .. (617) 491-0600
- Concord 369-8427
- Metro-Beaverbrook 899-4210
- Mystic Valley 729-7760

Region IV-B (South Shore, South Middlesex & Norfolk Counties)
Regional Office: (617) 727-9830

Area Offices:
- Medfield-Norwood ..... (617) 727-9830
- Newton-Wellesley-Weston & Needham 727-3809
- Coastal 727-3904
- South Shore West 727-4040
- Greater Framingham 727-4127
- Marlboro-Westboro 727-5508

Region V (Southeastern Massachusetts)
Regional Office: (617) 727-7905

Area Offices:
- Cape & Islands ..... (617) 255-7877
- Brockton ..... 580-0800 ext. 115
- Fall River 678-2901
- Attleboro 285-9721
- New Bedford 996-5455
- Plymouth 747-1500
- Taunton 727-7978

Region VI (Metropolitan Boston)
Regional Office: (617) 727-5795

Area Offices:
- West-Ros-Park ..... (617) 325-6700
- Dorchester-Mattapan 727-5670
- Solomon Carter Fuller 727-7510
- Harbor 727-7115
- Mass Mental Health Center ... 727-1435
- Tufts-Bay Cove 956-9750

This pamphlet was prepared by Julie Hardin and Camilla Allen.

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